



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

B2

DEC 8 2000

File: EAC 98 244 51376 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

Public Copy

IN BEHALF OF PETITIONER:

ifying data related to
ent clearly unarranged
ion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a national survey research center which seeks to employ the beneficiary as a research analyst. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The beneficiary holds an M.S. degree in Sociology from Virginia Commonwealth University. (He subsequently earned a Ph.D., but he did not hold that degree when the petition was filed.) The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee

on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Counsel states:

As part of the process of developing a long-range strategy for the war against drugs, public policy and law enforcement officials rely on experts such as [the beneficiary] for reliable data regarding user frequency, policy and treatment effectiveness, and other similar information gaps.

Counsel asserts that the Office of National Drug Control Policy's The National Drug Control Strategy, 1998: A Ten Year Plan "draws heavily upon the National Household Survey on Drug Abuse for which [the beneficiary] was a significant contributor."

In addition to documentation pertaining to the beneficiary's field, the petitioner submits several witness letters. Sam Schildhaus, senior research scientist with the petitioning entity, states:

I have worked with [the beneficiary] during the past year in projects under the Department of Health and Human Services' funded National Archive and Analytical Center ["NAAC"], where I serve as Deputy Director. [The beneficiary] serves on two projects that I am involved with. First, a model that uses a very new statistical technique known as hierarchical linear modeling, an extremely powerful statistical technique that will help us to better understand drug use and then to develop more successful prevention, treatment, and interdiction programs than we currently can.

In addition, [the beneficiary] has worked with me to measure the number of "hard core" or chronic drug users in the United

States. . . . [The beneficiary's] talent as a statistician and computer programmer will form the backbone of this work.

[REDACTED] Ph.D., senior research scientist with the petitioner's Division of Substance Abuse, Mental Health, and Disability Studies, asserts that the beneficiary "is one of the most gifted" researchers with whom she has worked. [REDACTED] Ph.D., research vice president and director of the petitioner's Washington, D.C., office, states:

[The beneficiary] has . . . supported a number of major efforts by NAAC team members from the government and Universities, most significantly a study to be presented at a major panel of the American Statistical Association. . . . This study is the first to apply multilevel methods to the single most important research data base in this area, the National Household Survey on Drug Abuse. . . . [The beneficiary] is at this time the only member of the research team with a complete command of the very complex, confidentiality-encrypted data structures on which these particular analyses.

[REDACTED] Ph.D., a policy analyst for the Virginia Board for People with Disabilities, states that she has worked with the beneficiary on several projects. [REDACTED] credits the beneficiary with "excellent" work, performed "very aptly" with "a high level of competency." Professor [REDACTED] of the Virginia Polytechnic Institute and State University, where the beneficiary has studied for a doctoral degree, describes the beneficiary as "among the most intelligent, tenacious, motivated, and committed students" that he has encountered. Prof. Hughes limits his comments to the beneficiary's academic work, as he is "not intimately familiar with the work [the beneficiary] is now doing" for the petitioner. The record shows that the beneficiary has won awards for his student work.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted further witness letters and a statement from counsel, who argues that the beneficiary "is uniquely qualified to contribute to the 'War on Drugs' in a positive way."

[REDACTED] project officer at the Office of Applied Science of the Substance Abuse and Mental Health Services Administration, has worked with the beneficiary "for the past two years" on two projects, "Applying Hierarchical Data Modeling on National Household Survey on Drug Abuse" and "An Analysis of the Worker Drug Use and Worker Policies and Programs." [REDACTED] asserts that the projects demand "a very strong and sophisticated modeling such as random coefficient model, [REDACTED] sampling, and Metropolis Hasting Method, a type of skill which has been found rare among substance

abuse researchers," and he deems the beneficiary to be "a vital link in [the nation's] long range strategy."

[REDACTED] in his second letter, states that the beneficiary "is the only member of the research team with complete mastery of the very complex, confidentiality-encrypted data structures on which the analyses he has conducted recently are based." He adds "I believe there is at this time no other individual with a comparable set of accomplishments."

The director denied the petition, stating "it is not sufficient for the record simply to enumerate the alien's qualifications," and that the petitioner has not demonstrated that the beneficiary's accomplishments "have garnered sufficient recognition to clearly establish national interest beyond that of other professionals" in the field.

On appeal, the petitioner submits a statement from the beneficiary, who observes that he has completed his doctoral degree and is "currently playing the leading role in the study on 'Worker Drug Use and Workplace Drug Policies and Programs' for the Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services." The beneficiary notes that he has written several more papers and that he has received a promotion with a significant salary increase in the time since the initial filing of the petition.

In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Accordingly, if the beneficiary was not eligible for the waiver as of the filing date, then any subsequent changes to his status cannot make him retroactively eligible as of that filing date (although, if the beneficiary was in fact already eligible, such evidence can be cited in a supporting capacity, to show the beneficiary's continued progress). The principal consideration must lie with the beneficiary's status as of the filing date. For full consideration of new circumstances, a new petition is the proper course of action.

Apart from evidence relating to new circumstances which did not exist at the time of filing, the petitioner submits a statement from the beneficiary and two further witness letters. The beneficiary argues that his work studying drug abuse among U.S. workers has substantial intrinsic merit and national scope. This argument, however, does not distinguish the beneficiary from others performing similar work. An alien cannot qualify for a national interest waiver based primarily on the importance of his or her occupation.

The beneficiary argues that he has distinguished himself from his peers by his receipt of awards and fellowships. These are student honors; there is no indication that the beneficiary has earned similar honors for professional-level work rather than for student work.

[REDACTED] research vice president of the petitioning entity, states:

[The beneficiary] is a very bright and highly motivated research scientist and has presented a significant array of papers in statistics, public health, criminology, and policy related areas at a variety of national conferences. . . . He has strong expertise in advanced statistics and quantitative analytical skills, which distinguish him among his peers.

Professor [REDACTED] of the Virginia Polytechnic Institute and State University deems the beneficiary "one of the finest Ph.D. students that our department has produced," and credits the beneficiary with "important contributions . . . to our country."

In a supplemental submission, the beneficiary discusses his work in greater detail and submits a letter from [REDACTED] Ph.D., director of the Bureau of Justice Statistics, who met the beneficiary at a summer workshop in 1997. [REDACTED] states that the beneficiary's "knowledge and expertise in criminology and substance abuse are valuable," and discusses projects which the beneficiary has completed or undertaken after the petition's filing date.

The above witnesses emphasize recent projects which were not underway when the petition was filed. Furthermore, each of the witnesses has direct ties to the beneficiary; one of the witnesses is an official of the petitioning employer, another is a professor at the university where the beneficiary recently completed his doctorate, and the third interacted with the beneficiary at a summer workshop. These letters do not demonstrate that the beneficiary's work has already had a significant impact beyond the institutions where he has worked and studied. Witness after witness has described the importance of studying the effect of drug abuse on the workplace, but the petitioner has submitted nothing to show that, to date, the beneficiary's work has resulted in a reduction of drug abuse, or in a new, coherent national policy to address this serious problem. Statistical analyses are important only as far as their applications, and the petitioner has not demonstrated that the outcome of the beneficiary's work has, so far, differed significantly from that of others working in the field. Awards recognizing the beneficiary's "promise" in the field do not serve as evidence that such promise has already been realized.

General assertions to the effect that the beneficiary is highly qualified cannot suffice. A plain reading of the statute shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.